

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JOSE ERASMO CRESPO,)	
)	
Petitioner,)	
)	
v.)	No. 4:16-CV-1460 NAB
)	
JAY CASSADY,)	
)	
Respondent,)	

MEMORANDUM AND ORDER

This matter is before the Court on the petition of Jose Crespo for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. The petition is denied.

Petitioner was convicted by a jury of capital murder in 1982. The state court sentenced him to life imprisonment. He appealed, and the Missouri Court of Appeals for the Eastern District affirmed. The court issued its mandate in March 1984. He says he wanted to appeal to the Missouri Supreme Court but his request was denied. According to the petition, he did not file a motion for postconviction relief.

Petitioner acknowledges that the one-year statute of limitations has run. He says that, at some point after 1982, the Missouri legislature repealed an unstated Article of the State Constitution that would have allowed him to appeal to the

Missouri Supreme Court. He argues that the legislature's action should allow him to file a late § 2254 petition.

While the petition is time-barred, the Court finds it need not dismiss on that ground. Under 28 U.S.C. § 2254(a), a district court may only entertain a petition for writ of habeas corpus if the petitioner “is in custody in violation of the Constitution or laws or treaties of the United States.” In other words, grounds that do not state a constitutional issue are not cognizable in a federal habeas petition. *E.g. Gee v. Groose*, 110 F.3d 1346, 1351-52 (8th Cir. 1997). The petition sounds in state law and does not state a cognizable ground for federal relief. As a result, it is denied.

Finally, Petitioner has failed to make a substantial showing of the denial of a constitutional right, which requires a demonstration “that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right.” *Khaimov v. Crist*, 297 F.3d 783, 785 (8th Cir. 2002) (quotation omitted). Thus, the Court will not issue a Certificate of Appealability. 28 U.S.C. § 2253(c).

Accordingly,

IT IS HEREBY ORDERED that the petition for writ of habeas corpus is **DENIED**, and this action is **DISMISSED**.

IT IS FURTHER ORDERED that the Court will not issue a certificate of appealability.

Dated this 20th day of September, 2016.

A handwritten signature in cursive script, appearing to read "Rodney W. Sippel", is written over a horizontal line.

RODNEY W. SIPPEL
UNITED STATES DISTRICT JUDGE